

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAUL STEPHEN KELLER,

Plaintiff,

v.

SCOTT DEGOUGH, et al.,

Defendants.

Case No. 1:21-cv-01707-JLT-EPG (PC)

ORDER DENYING PLAINTIFF'S MOTION
FOR AN ORDER FOR AN EXAMINATION
BY AN OUTSIDE DOCTOR

(ECF No. 25)

Paul Keller ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On March 28, 2022, Plaintiff filed a motion for an order for an examination by an outside doctor, pursuant to Federal Rule of Civil Procedure 35.¹ (ECF No. 25). Plaintiff asks for an examination because illnesses that he contracted since being incarcerated at Wasco State Prison - Reception Center are at issue in this case. "The main reason for this request[] is to get a second opinion on [Plaintiff's] illnesses, and to see how greatly they have progressed, due to

¹ Pursuant to Federal Rule of Civil Procedure 35(a)(1), "[t]he court where the action is pending may order a party whose mental or physical condition—including blood group—is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control."

1 them being inadequately treated, or not treated at all.” (Id. at 4). Plaintiff does not wish to be
2 examined by the same doctor that conducted his examination on November 10, 2021.

3 Plaintiff’s motion will be denied. First, discovery has not yet been opened. (ECF No.
4 3, p. 4) (“No discovery may be initiated until the Court issues a discovery order or otherwise
5 orders that discovery begin.”). Second, Federal Rule of Civil Procedure 35 does not allow a
6 party to request that the Court find a doctor and pay for the examination. Instead, it allows the
7 Court to require a party to submit to an examination when one party has retained a licensed or
8 certified professional. Fed. R. Civ. P. 35(a)(1) (“The court where the action is pending may
9 order a party whose mental or physical condition—including blood group—is in controversy to
10 submit to a physical or mental examination by a suitably licensed or certified examiner.”).
11 Moreover, the motion “must specify the time, place, manner, conditions, and scope of the
12 examination, as well as the person or persons who will perform it.” Fed R. Civ. P. 35(a)(2)(B).
13 Here, Plaintiff does not have a designated doctor, does not indicate that he is paying for the
14 examination (or cite to any legal authority requiring the court to pay for one), and does not
15 indicate that he needs a court order to agree to participate in an examination.

16 Accordingly, IT IS ORDERED that Plaintiff’s motion for an order for an examination
17 by an outside doctor under Federal Rule of Civil Procedure 35 is DENIED.

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19 IT IS SO ORDERED.

20 Dated: March 29, 2022

21 /s/ Eric P. Grogan
22 UNITED STATES MAGISTRATE JUDGE
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